



BOARD OF INQUIRY *(Human Rights Code)*

IN THE MATTER OF the Ontario *Human Rights Code*, R.S.O. 1990, c.H.19, as amended;

AND IN THE MATTER OF the complaint by Andrew Cobb dated June 2, 1998, alleging discrimination with respect to employment because of handicap or perceived handicap.

B E T W E E N :

Ontario Human Rights Commission

- and -

Andrew Cobb

Complainant

- and -

Brian Coates and Centennial Plymouth Chrysler (1973) Ltd.

Respondents

INTERIM DECISION

Adjudicator : Peter Annis

Date : January 21, 2002

Board File No: BI-0426-01

Decision No : 02-001

Board of Inquiry *(Human Rights Code)*
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APPEARANCES

Ontario Human Rights Commission
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 Anthony D. Griffin, Counsel

Andrew Cobb, Complainant
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)
)
 Robert H. Littlejohn, Counsel

Brian Coates, Personal Respondent
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)
)
 Joseph N. Tascona

Centennial Plymouth Chrysler (1973) Ltd.,
)
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)
 Corporate Respondent
 Joseph N. Tascona

These are my reasons for Decision and Order arising out of a motion conducted by telephone conference on Friday, January 11, 2002. The Complainant and Respondents have brought a Motion and Cross-motion respectively for the production of certain documents relating to the pending Board of Inquiry hearing.

The cross-motion was consented to by the Complainant and indeed, the Complainant has complied with or is in the course of complying with the request for productions by the Respondents. Accordingly, the Board will make no formal order unless informed at a later time that Complainant is no longer complying with Respondents' request for productions. If an issue arises in respect of these productions, a further conference call may be arranged with the Board.

The Complainant's Notice of Motion describes five heads of documents, production of which is being sought. In paragraph a) of his Notice of Motion, the Complainant is requesting "any and all materials regarding the termination of Mr. Cobb". On the return of the motion however, the Complainant agreed that, apart from documents being sought in the other paragraphs referred to in the Notice, there are no other materials to which this paragraph pertains.

With respect to productions sought in respect of paragraphs b) and c) of the Complainant's Notice of Motion, the Respondents, after particularization of the nature of materials being sought by Mr. Littlejohn and Mr. Griffin, did not object to supplying the documents, but indicated no such documents existed. Accordingly, I accept the Respondents' explanation and no order will be issued in respect of these paragraphs with the understanding that there are no documents which fit the description of document requested.

In paragraph d) of the Notice of Motion, the Complainant sought production of Centennial's financial statements for three years prior to Mr. Cobb's termination including the relevant supporting Revenue Canada documents, such as Tax Returns and Notices of Assessment. Mr. Littlejohn, in his submissions on behalf of the Complainant indicated that he required these



productions in order to be able to demonstrate that Mr. Cobb successfully performed at his job. The financial statements of the Corporate Respondent would apparently support this conclusion.

Mr. Griffin, on behalf of the Commission, although in agreement with the need for documentation to establish that Mr. Cobb was a good performer, indicated that the financial statements were likely unnecessary as long as the year-end Parts Department sales figures for three years prior to Mr. Cobb's termination were made available as requested in paragraph e) of the Notice of Motion. Inasmuch as I will be ordering production of the sales figures for the Parts Department, I tend to agree with Mr. Griffin and therefore I will not order production of Centennial's financial statements.

In respect of paragraph e) of the Notice of Motion, Mr. Tascona argued that these materials were not relevant inasmuch as the Respondents were not claiming Mr. Cobb had been terminated for matters relating to low sales figures in the Parts Department. Nevertheless, I am persuaded that issues of Mr. Cobb's good work performance are germane to his case and that the sales figures may be of assistance in establishing this fact.

In the course of determining which three years of sales figures are to be produced, Mr. Littlejohn indicated that he was requesting the sales figures, not only for the three years prior to Mr. Cobb's termination, but as well those for the year of his termination, i.e. 1998. This constituted an amendment of sorts to the request made in the Complainant's Notice of Motion. The Respondents consented to this amendment.

Concerns were also expressed by Mr. Tascona about possible divulgence of confidential financial information, particularly as Mr. Cobb is employed by a competitor of the Corporate Respondent. Given that there was acknowledgment of the implied undertaking imposed on parties and their counsel not to use materials obtained in the course of one proceeding in another matter or for other purposes, it seems to me that at this stage being that of the production of documents, no other order in connection with maintaining confidentiality of the Corporate Respondent's sales



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figures is necessary. If these materials were to become evidence at the hearing proper, consideration can be given at that time to an order under the *Statutory Powers Procedure Act* for maintaining the confidentiality of the same.

Accordingly, the Respondents are ordered to produce within 10 days of receipt of this order all documents showing year-end Parts Department sales figures for three years prior to Mr. Cobb's termination as well as those for the year of his termination.

Dated at Ottawa, January 21, 2002

Peter Annis
Member, Board of Inquiry

